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Federal Communications Commission
Office of the Secretary

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

IN RE: PETITION TO INSTITUTE NOTICE OF PROPOSED RULEMAKING
OR NOTICE OF INQUIRY TO ADOPT FAIRNESS DOCTRINE
FOR POLITICAL SPEECH OF
NONCOMMERCIAL BROADCASTERS

PETITION FOR RULEMAKING OR NOTICE OF INQUIRY

TO: FEDERAL COMMUNICATIONS COMMISSION

SUBMITTED ON BEHALF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, PETITIONER BY:

BRUCE FEIN
562 INNSBRUCK AVENUE
GREAT FALLS, VIRGINIA 22066
TELE: 703-759-5011

PETITION TO INSTITUTE NOTICE OF PROPOSED RULEMAKING OR NOTICE OF INQUIRY TO ADOPT FAIRNESS DOCTRINE FOR POLITICAL SPEECH OF NONCOMMERCIAL EDUCATIONAL BROADCASTERS

The National Rifle Association of America hereby petitions the Federal Communications Commission under 5 U.S. Code 553(e) to initiate either a Notice of Proposed Rulemaking or a Notice of Inquiry to reinstate the Fairness Doctrine as applied to political speech of noncommercial educational broadcasters (hereinafter "NEBs"). They are the beneficiaries of reserved spectrum or frequencies shielded from the competition of other would-be users. They occupy a discrete broadcasting submarket--namely, one that aims to influence public officials and opinion leaders on significant political matters. They do not accept advertising and do not seek profit maximization. These features of noncommercial educational broadcasting enable local licensees and national radio and television noncommercial networks to exercise a predominant influence over political discourse. Further, these NEB earmarks cancel or substantially mitigate the factors which the Commission found responsible for a "chilling effect" on free speech caused by the Fairness Doctrine. NEBs and NEB networks should be subject to the Fairness Doctrine as regards political speech to insure an enlightened spectrum of facts and opinions necessary to informed political decisionmaking by the electorate and public officials,[1] a goal that stands at

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[1] The Commission enjoys jurisdiction over NEB networks ancillary to enforcing fairness doctrine obligations. Accord CBS, Inc. v. F.C.C., 453 u.s. 367, 391 n. 14 (1981) (F.C.C. jurisdiction over commercial television networks reasonably ancillary to its reasonable access enforcement obligations under 47 U.S. Code 312(a)).

the apex of the public interest.

I.

Background

The Federal Communications Commission enjoys a broad statutory mandate to regulate in furtherance of the public interest. 47 U.S. Code 303, 307(a), 309(a); Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 380 (1969). For several decades prior to 1987, the Commission employed its public interest directive to require broadcaster compliance with a multipronged Fairness Doctrine.

Generally speaking, the doctrine required licensees to devote adequate time to public issues, to vent conflicting viewpoints in such programming, to offer opportunities for candidate responses to political editorializing, and, to provide reply opportunities for persons victimized by personal attacks in the presentation of a controversial issue of public importance. See Red Lion, supra at 373-374, 377-378.

The doctrine was designed to prevent domination over the marketplace of ideas by licensees, or an imbalanced presentation of viewpoints, especially in matters where the political life of the community was at stake. It substantially advanced the First Amendment goal of promoting a diverse expression of facts and ideas readily available to the electorate in order to enhance the level of public understanding. Red Lion, supra at 390. A full and balanced presentation of political speech is vital to the public interest because "[s]peech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

The notion that balanced and plentiful broadcasts of political speech advances an important public interest was not a curio of the Fairness Doctrine. Thus, Congress had enacted the so-called "equal time" and "lowest unit charge" rules for candidates seeking public office. See 47 U.S. Code 315(a),(b). Congress also by statute required licensees to offer "reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." 47 U.S. Code 312(a)(7). The constitutionality of the statute was sustained in CBS, Inc. v. F.C.C., 453 U.S. 367 (1981). Moreover, the Commission itself continues to foster broadcaster balance in political speech through its rules governing political editorializing, the Zapple doctrine, and coverage of ballot issues.[2] In sum, there is a broad consensus behind the idea that government undertakings to foster unbiased, plentiful, and contrasting political speech by broadcasters is advantageous to the public interest in promoting an informed electorate and political decisionmaking.

In 1987, the Commission abandoned twin Fairness Doctrine obligations: providing adequate coverage of significant issues of public importance; and, offering in aggregate a reasonably balanced presentation of viewpoints in such broadcasts. Syracuse Peace Council, 2 F.C.C. Rcd. 5043 (1987), recon. denied, 3 F.C.C. 2d 2035 (1988). A federal appeals court concluded that the

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[2] See September 22, 1987 Letter of then Chairman Dennis Patrick to the Honorable John D. Dingell, Chairman, House Committee on Energy and Commerce. A copy of the letter is attached at Appendix A.

abandonments were derived from the Commission's public interest guidepost, and sustained their legality. Syracuse Peace Council v. F.C.C., 867 F. 2d. 654 (D.C.Cir. 1989).

The Commission's decision to clip the Fairness Doctrine rested substantially on its earlier Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees, 102 F.C.C. 2d 143 (1985). (hereinafter "Fairness Report")

II.

Justification for the Proposed Rule

Political speech is the lifeblood of enlightened self-government. As Chief Justice Charles Evans Hughes trumpeted in DeJonge v. Oregon, 299 U.S. 353, 365 (1937), political speech fosters government responsive to the will of the people and peaceful changes in public policy. The Chief Justice added: "Therein lies the security of the Republic, the very foundation of constitutional government." Id. In Whitney v. California, 274 U.S. 357, 375 (1927) (concurring opinion), Justice Louis D. Brandeis declared that "public discussion is a political duty," that "the fitting remedy for evil counsels is good ones," and, that reason will ultimately prevail through public discussion.

Libel law also acknowledges the paramount public interest in political speech. Thus, in New York Times v. Sullivan 376 U.S. 254 (1964), the Supreme Court held that defamatory speech regarding public officials is protected by the First Amendment absent proof by clear and convincing evidence that a false statement of fact was published with actual malice.

A battery of federal broadcast statutes champion the right of the electorate to full and adequate exposure to divergent

political viewpoints. Thus, by virtue of 47 U.S. Code 315(a): "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station." The political assumption behind that section is that informed voting for candidates is fostered and that elections echoing the public will is promoted by preventing broadcast stations from favoring one candidate over another with its potential for distorting the public mind.

Section 315(b)(1) promotes plentiful political speech on radio and television. It stipulates a "lowest unit charge" rule for any legally qualified candidate seeking election to any public office who desires to purchase broadcast time during specified periods antedating election day. The lowest unit rate stipulation rests on the proposition that broadcasts of candidate political speech serves the public interest.

The reasonable access rule of 47 U.S. Code 312(a)(7) is sister to the lowest unit rate mandate. Subsection (a)(7), as interpreted by the Commission and as sustained by the Supreme Court in CBS, Inc. v. F.C.C., supra, creates an affirmative, promptly enforceable right of reasonable access to the use of broadcast stations for individual candidates seeking federal elective office. Its premise is that political speech of federal candidates over the airwaves should be encouraged to advance informed judgments by the voters.

The Commission's 1985 Fairness Report likewise accepted the conclusion that the public interest is advanced by broadcast

audience access to diverse and antagonistic sources of information. See 50 Fed. Reg. 35419 (Aug. 30, 1985). That was the public interest justification for initially adopting the Fairness Doctrine. Report of the Commission in Docket No. 8516, 13 F.C.C. 1246, 1249 (1949). The reasons proffered by the Commission for discarding two prongs of the doctrine are unpersuasive as applied to the political speech of NEBs.

III

Special Characteristics of Noncommercial Educational Broadcasters

NEBs occupy a distinct submarket of the broadcasting industry. The Commission has set aside designated spectrum for noncommercial educational radio, and has made special television channels available only for noncommercial educational use. See F.C.C. v. League of Women Voters, 468 U.S. 364, 367 (1984). Congress has offered and continues to offer substantial federal assistance to subsidize NEBs through the Corporation for Public Broadcasting and otherwise. Id. at 367-369; 47 U.S. Code 396.

NEBs, unlike commercial broadcasters, are not financed by commercial advertising revenues, but thrive largely from private and public contributions and program underwriting. For instance, in fiscal year 1989, noncommercial educational television was funded 23 percent from individual contributions, 16 percent from the federal government, 22 percent from state and local governments, 9 percent from colleges and universities, 21 percent from foundations and businesses, and 8 percent from other

sources.[3] Additionally, NEBs and commercial broadcasters recognize their discrete business incentives and interests in their formation of generally separated trade associations. Moreover, a prime target audience of NEBs for their politically pivotal programming consists of public officials and political opinion leaders, whereas commercial broadcasters largely target audiences likely to purchase advertised products. Congress has recognized the unique market position of NEBs by noting that they constitute "a source of alternative telecommunications services" distinct from their commercial counterparts. See 47 U.S. Code 396(g). The revenue streams, spectrum, television channels, national programming availability through National Public Radio and the Public Broadcasting Service, and discrete political audiences of NEBs as compared with commercial broadcasters earmarks them as a cognizable broadcast submarket for antitrust purposes. See Brown Shoe Co. v. United States, 370 U.S. 294, 325 (1962). This fact carries pronounced significance for the Fairness Doctrine: namely, that a proliferation of commercial broadcast outlets will not foster political programming diversity for the audiences of NEBs. These audiences, however, exert an influence in public affairs vastly disproportionate to their numbers, and thus are most in need of access to balanced political speech. Indeed, Congress virtually acknowledged the same in 47 U.S. Code 396(g)(1)(A). It authorizes CPB to assist the production of high quality programming for NEBs "with strict adherence to objectivity and balance in all programs or series of

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[3] Figures supplied by the Corporation for Public Broadcasting, October 1990.

programs of a controversial nature."

To recapitulate: Noncommercial stations are not driven by profit maximization. Thus, the possibility of fairness complaints and the costs of resolution are vastly less inhibiting to NEBs in contemplating whether to broadcast controversial political speech than is true for their commercial brothers. Additionally, balanced political speech for NEB audiences is not assured by the spiralling number of commercial broadcasters because the former are generally intellectually tied to NEB programming. But the public interest in balanced presentation of political viewpoints reaches its zenith with NEB audiences because they are typically exceptionally influential over local, state and national political decisions. Finally, if the CPB must adhere to strict standards of objectivity and balance in the controversial programs it assists for prospective NEB use- a mandate Congress believes advances the public interest - then it seems quixotic simultaneously to conclude that the public interest does not justify a balance and objectivity requirement of NEBs themselves for all of their broadcasts involving political speech.

IV

The Commission's Reasons for Abandoning the Fairness Doctrine are Unpersuasive as Applied to NEBs

The several reasons the Commission assembled to abandon the Fairness Doctrine as contrary to the public interest are unpersuasive in the broadcasting submarket occupied by NEBs.

1. The Commission found that the doctrine induced broadcasters to minimize controversial programming because

fearful of the costs of defending an alleged fairness violation and the potential sanctions of a fairness transgression. NEBs, however, are not profit seekers. One of their foremost goals is to influence public policy through broadcasting political speech. Unlike commercial broadcasters who must satisfy the financial demands of shareholders, NEBs will not curb coverage of political speech out of concern for a rosy balance sheet. If they did so, some private contributions might flag since many contribute because of the political speech of NEBs.

Fear of Commission sanctions for a fairness violation are much attenuated with NEBs. The amount of invested capital in an NEB is typically diminutive compared to a commercial counterpart. The potential of license revocation is thus less intimidating. The same holds true for potential Commission fines because NEBs are not motivated to maximize profits.

The Fairness Doctrine cannot be brandished to dissuade NEBs from accepting political advertising, as the Commission has noted has occurred with commercial broadcasters, because the former do not accept advertising. It speaks volumes that none of the anecdotal examples of chilling effect engendered by the doctrine and cited by the Commission involved NEBs. That observation strongly suggests the absence of a chilling effect on the latter, a conclusion consistent with the incentives they enjoy to abundant broadcast of controversial political speech.

2. The Commission found that the Fairness Doctrine deterred broadcast of unorthodox or unconventional speech. It reasoned that balanced programming requires ventilating only "major" or "significant" community opinions, and thus the maverick viewpoint

was orphaned. But NEBs characteristically serve niche markets outside the mainstream. America's Public Television Stations, a trade group, touts the broadcasting of their members as satisfying viewers' specialized interests and needs that network TV neglects. NEBs regularly cater to the politically unorthodox because that is often what their special audiences or financial backers wish to receive or explore.

The Fairness Doctrine would not compel NEBs to renounce broadcasting the unorthodox, and such broadcasts could be made relevant to Fairness Doctrine compliance. There is thus no factual or intuitive foundation for the belief that NEBs would be discouraged from the broadcast of provocative and unconventional speech disliked by a community majority because of the Fairness Doctrine.

3. The Commission found that implementation of the Fairness Doctrine required scrutiny of programming content, a task disfavored by the First Amendment. That observation is accurate, but not conclusive on the wisdom of the doctrine. The Commission also scrutinizes programming content in the award or renewal of broadcast licenses, and has a special statutory obligation to police children's programming. See 47 U.S. Code 303b. The same type of programming evaluation is required in applying the Fairness Doctrine to ballot propositions. The programming of CPB is also subject to government review for balance and objectivity.

In sum, the disfavored undertaking of program scrutiny by government may frequently be outweighed by its public interest benefits. And the Fairness Doctrine as applied to the political

speech of NEBs carries incalculable public interest dividends: fully informed political decisionmaking and public policy responsive to the will of the people. These desiderata substantially exceed the First Amendment detriment of government review of programming content.

4. The Commission found that the Fairness Doctrine invites intimidation of broadcasters by government officials who might brandish alleged violations to further partisan political purposes. The intuition may be accurate as regards commercial broadcasters, but is unconvincing as regards NEBs. Thus, government officials, including F.C.C. Commissioners, perfervidly vie for opportunities to appear on NEB programming, such as "All Things Considered" or the "MacNeil-Lehrer News Hour." NEBs hold the whip hand over politicians or government officeholders, not vice versa. The idea that NEBs will shun political speech to avoid government vindictiveness is fanciful; if the latter was attempted, the retaliation would probably be instantly featured in an NEB broadcast.

NEBs, moreover, are not profit-driven. Thus, they are much less vulnerable to intimidation by the prospective costs of defending a Fairness Doctrine allegation than are commercial broadcasters.

5. The Commission found that the Fairness Doctrine drained broadcasters and the F.C.C. of significant economic and administrative resources. Confining the doctrine to the political speech of NEBs, however, would slash those costs by slashing the number of affected licenses and the doctrine's programming scope.

6. The Commission found that a proliferation of alternate information sources rendered the need for the Fairness Doctrine marginal. But those findings lack cogency as applied to the political programming of NEBs. Their audiences occupy a distinct submarket within the broadcast and information industries. They are disproportionately public officials or public opinion leaders. Their listening and viewing loyalties to NEB political programming are strong. A multiplication of commercial broadcasters in a local market generally does not increase the exposure of NEB audiences to diverse and contrasting political speech because they generally avoid commercial radio or television.[4] A Fairness Doctrine for NEBs is thus necessary to promote informed political decisionmaking and public opinion on the burning issues of the day. If political balance and

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[4] The Commission hastily scribbled a cryptic ipse dixit in Syracuse Peace Counsel v. Television Station WTVH, Syracuse New York, 2 FCC Rcd 5043, 5067 n. 163 (1987) denying the relevance of listening and viewing patterns of audiences as opposed to available information outlets in determining whether the diversity and balance goals of the Fairness Doctrine are achieved. That unadorned assertion is unconvincing. Indeed, the Fairness Doctrine, until abandoned, and the equal time, political editorializing, and personal attack rules all rest on the assumption that programming balance or remedial actions must be accomplished on a single station because of audience loyalties and habits. These rules seek to make individuals fully informed and enlightened. That obtains only if their viewing or listening habits result in their personal exposure to diverse viewpoints and to a balanced presentation of controversial issues of public importance. Thus, the Fairness Doctrine was never satisfied by a licensee's proof that conflicting viewpoints were available on other stations because the audiences of broadcasting rivals are likely to be substantially segregated. Accordingly, programming balance was required by each license to insure that its distinct audience would be fully informed. Audience habits are thus directly pertinent to answering whether the Fairness Doctrine goal of an informed electorate is fulfilled by augmenting the number of broadcast information outlets but permitting programming bias on individual stations.

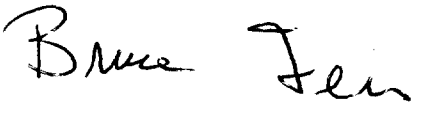
objectivity is not provided to NEB audiences, no substitute media will shore up the deficiency.

7. The Commission noted that its decision to abandon the Fairness Doctrine was based on the regulatory objective of vindicating "the interest of the public in obtaining access to diverse viewpoints on controversial issues of public importance." With regard to NEBs, that objective is best achieved by retention of the Fairness Doctrine regarding political speech. The affidavits and NPR transcripts in Appendix B fortify the conclusion that NEB audiences will receive a distorted presentation of facts and political viewpoints in the absence of the doctrine, and the public interest in enlightened self-government will accordingly suffer.

CONCLUSION

The Commission should issue either a Notice of Proposed Rulemaking or a Notice of Inquiry anticipating the adoption of the Fairness Doctrine for the political speech of NEBs.

Respectfully submitted,



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The National Rifle
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APPENDIX A

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 22, 1987

OFFICE OF
THE CHAIRMAN

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Dingell:

This letter responds to your inquiry of September 14, 1987, regarding the scope of the Commission's recent ruling on the fairness doctrine in the Meredith remand. In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse, New York, FCC 87-266 (rel. Aug. 6, 1987). Specifically, you have asked the following questions:

> (1) What did the Commission decide on August 4 regarding enforcement of the political editorial rule, the personal attack rule, the Zapple doctrine, and the application of the fairness doctrine to ballot issues?

The Commission's August 4, 1987 ruling related only to its fairness doctrine policy. This ruling did not affect any obligations codified by the Congress, such as the equal opportunity provisions under § 315 or the reasonable access provisions of § 312 (a) (7).

The Commission's ruling on the enforcement of the fairness doctrine occurred in the context of a particular adjudication. In that proceeding, the Syracuse Peace Council had complained that Meredith Corporation's Station WTVH, Syracuse, New York, had violated the doctrine by failing reasonably to provide contrasting viewpoints to certain editorial advertisements that WTVH had aired which advocated the construction of a nuclear power plant. Although the Commission had initially determined that Meredith had indeed violated the doctrine, it was later ordered to consider Meredith's argument in its defense that enforcement of the doctrine was unconstitutional.

In ruling on Meredith's constitutional arguments in its defense, the Commission specifically discussed the scope of its decision. First, the Commission concluded that there was nothing in the manner in which it enforced the doctrine in the Meredith case that

would allow it to limit its decision to the constitutionality of the doctrine as applied to Meredith. Second, the Commission determined that its enforcement of the Cullman doctrine in this case, which governed the broadcast of editorial advertisements, was simply the application of general fairness doctrine obligations to a particular factual setting. It concluded, therefore, that its decision could not be limited to the constitutionality of the Cullman doctrine alone, but rather had to address the general fairness doctrine.

Finally, the Commission specifically stated that because the case before it did not involve every aspect of the doctrine, "we need not -- and do not -- decide here what effect today's ruling will have on every conceivable application of the fairness doctrine." Syracuse Peace Council at n.75. This statement is consistent with the general judicial principle that a decisionmaker in an adjudicatory proceeding need not rule on issues that are not before it. Likewise, consistent with these principles, the Meredith decision will serve as precedent in any future proceeding in which the fairness doctrine and related rules are sought to be enforced.

Hence, because the enforcement of the political editorial rules, the personal attack rules, the Zapple doctrine, or the application of the fairness doctrine to ballot issues were not before it in the Meredith remand, the Commission did not make any specific decision on August 4 regarding these issues. And although these rules may come within the precedential scope of the Meredith decision, to date, the Commission has made no determination with respect to that issue.

(2) What plans does the Commission have for resolving any ambiguities that may remain regarding enforcement of these rules or other rules associated with Fairness Doctrine obligations?

A group of broadcasters and others interested in this issue has petitioned the Commission to resolve any ambiguity that the Meredith remand may have created regarding the enforcement of the personal attack and political editorializing rules. This group asks the Commission either to conclude an outstanding rulemaking involving those rules or to issue a declaratory ruling stating that the Commission will no longer enforce the political personal attack and political editorializing rules. Additionally, the Commission has received two petitions for reconsideration of the Meredith remand decision, one of which also requests the Commission to declare that it will no longer enforce the political editorial or personal attack rules.

The Commission is seeking public comment on the petitions for reconsideration and the petition for clarification. After full consideration of these comments, the Commisison will (1) resolve the petitions for reconsideration and (2) clarify the impact of the Meredith decision on rules and policies associated with the fairness doctrine.

> (3) What instructions have been provided to staff regarding enforcement of the fairness doctrine, including the rules cited above? What is the status of pending complaints regarding violations of these rules? If a complaint is received by the Commission alleging a violation of these rules, would the Commission accept the complaint, investigate the alleged violation, and act on it if the complaint is justified?

a. Instructions on Enforcement

The Meredith decision remains this agency's most recent precedent on the enforcement of the fairness doctrine. Until such time as the Commission makes a formal determination as to the scope of Meredith beyond general fairness doctrine cases, the Commission will continue to accept, investigate and act upon complaints on matters that do not clearly fall within the scope of the Meredith decision, including personal attack, political editorializing, Zapple and ballot issues cases.

It is worth noting, however, that a broadcaster subject to investigation might cite in its defense the Meredith decision, arguing that, because of the similarities between the general fairness doctrine and the particular rule at issue in its proceeding, the Meredith decision serves as precedent for the conclusion that the particular rule is unconstitutional. If that argument were made, then the Commission would have to decide the precedential applicability of the Meredith decision to the particular rule at issue in that proceeding. Should the Commission be forced to rule on a case before acting upon the petition for clarification, it would, of course, take into consideration all comments filed in response to the above-noted petitions.

b. Status of Pending Complaints

There are currently 27 complaints pending before the Commission that have alleged violations of Commission rules in the fairness doctrine area. These complaints are in various stages of the review process, but, based on an initial review, it appears that some allege violations of the personal attack and political

editorializing rules, as well as other Commission policies related to the fairness doctrine that may not be clearly within the scope of the Meredith decision.

c. Action on Complaints

Althpugh no complaints pending at the time of the Meredith decision have been dismissed as of this date, the staff will be instructed to dismiss both pending and newly filed complaints that involve the Cullman doctrine and other general fairness doctrine obligations that are clearly within the scope of the Meredith decision. In each case, however, the complainant will be informed that the Meredith decision is subject to reconsideration and judicial appeal and that, if the Commission changes its conclusion with respect to the enforcement of the fairness doctrine on reconsideration or is reversed on appeal, the complainant will be free to refile the complaint. The staff is already responding to telephone inquiries in a similar manner.

Until further instruction, the staff has been instructed to accept, investigate and resolve complaints that present prima facie violations of rules that are not clearly within the scope of the Meredith decision (e.g., personal attack, political editorializing) as described above in Section (3) (a).

I hope that this information will be helpful to you and the Committee in understanding the current status of the Commission's programming rules that are or may be related to the fairness doctrine.

Sincerely,

Dennis R. Patrick
Chairman

APPENDIX B

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT

THOMAS C. WYLD, being duly sworn, deposes and says:

1. He is employed as a vice president for public relations by the Firm of Ackerman, Hood, and McQueen, in Washington, D.C..

2. In that capacity, his sole client, at all times relevant to this Affidavit, was the National Rifle Association of America (NRA), at its National Headquarters at 1600 Rhode Island Avenue, N.W., Washington, D.C.

3. He arranged, and monitored, an interview between Celeste Wesson, a reporter for National Public Radio (NPR), and Wayne R. LaPierre, Jr., who was then the executive director of the NRA Institute for Legislative Action (ILA). This interview took place on November 14, 1989.

4. During the interview, he heard Mr. LaPierre discuss the issue of armor piercing ammunition. Mr. LaPierre explained that the stated objective of the legislation was to restrict the sale of certain ammunition to police and military forces (the "KTW" bullet). He explained that the original bill, as drafted, would have banned almost all hunting ammunition, and that the U.S. Department of Treasury also opposed the bill. He told her that NRA worked with Congress, and the Treasury Department, to help draft the final bill, which became law, preventing this ammunition from being sold to civilians.

5. After the interview, the reporter, Ms. Wesson, asked the affiant for the names of police officers, with whom she might talk, who would corroborate what Mr. LaPierre had said to her. he gave her the names, and telephone numbers, of Gordon Robertson, an Oklahoma police officer, and Tom Aveni, a police officer from New Jersey.

6. Affiant is informed, and believes, that in a broadcast heard on December 16, 1989, National Public Radio reporter Celeste Wesson stated "... the NRA fought a bill to outlaw what were known as 'cop killer bullets', claiming that the bill would also eliminate all conventional rifle ammunition. Chief (Joseph) McNamara (of the San Jose, California, Police Department), remembers the reaction."

7. He is further informed, and believes that National Public Radio then played a recorded statement from Chief McNamara

asking "how could anyone oppose outlawing bullets that were specifically designed to penetrate a police officer's protective vest?"

8. The broadcast in question, on information and belief, was a part of a week long series of broadcasts dealing with the subject of firearms. Affiant noted several instances in which it appeared that NPR had deliberately misrepresented facts, and brought this to the attention of Larry Abramson, whom affiant believed to have been science editor for NPR at that time, and who was editor of the series on firearms. Mister Abramson brushed aside complaints of deliberate misrepresentation by saying that "Your public relations is your problem."

9. Further, deponent sayeth not.

The above statements are true and correct, to the best of my knowledge.

THOMAS C. WYLD

Subscribed and sworn to before me, a notary public, this 15th day of May, 1991.

Denise Dean
Notary Public

My commission expires: July 14, 1994

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT

DEBBIE NAUSER, being duly sworn, deposes and says:

1. She is employed as a senior vice president for public relations by the Firm of Ackerman, Hood, and McQueen, in Washington, D.C..

2. In that capacity, her sole client, at all times relevant to this Affidavit, was the National Rifle Association of America (NRA), at its National Headquarters at 1600 Rhode Island Avenue, N.W., Washington D.C.

3. In December 1989, she was contacted by a person whom she was informed, and believed, to have been a reporter for National Public Radio (NPR), who asked for the names of Constitutional scholars who believe that the Second Amendment protects a personal right.

4. In her capacity as a public relations advisor to NRA, she gave the names of Judge David Boehm, Professor Robert Cottrol, and Stephen Halbrook.

5. In a broadcast heard on December 11, 1989, National Public Radio reporter Nina Totenberg stated "... the NRA was unable to name a single professor of constitutional law who would say that the second amendment protects an individual right.

6. Further, deponent sayeth not.

The above statements are true and correct, to the best of my knowledge.

Debbie Nauser
Debbie Nauser

Subscribed and sworn to before me, a notary public, this 16th day of May, 1991.

Denise Dean
Denise Dean
Notary Public

My commission expires: July 14, 1994

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An Affiliate

DATE December 11, 1989
TIME 8:40 AM (ET)
NETWORK National Public Radio
PROGRAM Morning Edition

TRANSCRIPT

Bob Edwards, anchor:

Americans own more than a hundred thirty million guns. Each year, these weapons are used to kill thirty-three thousand people. That makes firearms the eighth leading cause of death in the United States. Nevertheless, gun groups have effectively blocked most efforts to limit the purchase, ownership, even the types of weapons sold in this country. This morning, we begin a week-long series of reports on America's love affair with guns. We start in Denver, Colorado and one effort to ban semi-automatic assault weapons, the type used a year ago to kill school children in Stockton, California. Here is NPR's Neal Conan.

Neal Conan reporting:

Outside the Denver City Council chambers last month, hundreds of people showed up on a Monday evening to speak on a proposed assault weapons ban. At the end of this hallway, twenty-seven people signed up to talk in favor of the bill; at this end, perhaps five hundred jammed in to oppose it. Obligingly, they raised their signs for each of the local TV crews, 'Punish the bad guys, not the good guys,' they say; 'Ban liberals, not firearms.' Here too is an energetic man in an alpine jacket with a sprig of edelweiss pinned to it. Despite his advantage in numbers, Jay Peck [sp], the chairman of the Colorado Firearms Coalition, says that beating this bill will not be easy.

Jay Peck (Chairman, Colorado Firearms Coalition): This is a town where the mayor has a certain following on the city council, and the mayor has come out in favor of this ban. So, this is going to be a very interesting thing.

Kathy Donahue (Denver City Council President): Tonight, there will be a public hearing on council bill 714. I will call the speakers, one for, one against, one for, one against. Usually...

Conan: Council President Kathy Donahue has to explain the ground rules because there has never been a hearing quite like this one before. Outside, the spill-over crowd is watching on TV sets in the jury room and in the hallway. Here, inside the white and gold trimmed chamber, a new addition to the speaker's podium: little lights to warn speakers that their time is up.

Videocassettes are available in any format for a period of 31 days from air date, audio cassettes for 14 days. Call any VNS office

Donahue: Councilman Roberts, do you want to place the bill on the floor?

Councilman Roberts: Move that Council Bill 714 be placed on final consideration.

Donahue: Councilwoman Reynolds has asked the courtesy of taking a few minutes to explain the bill. Councilwoman Reynolds?

Kathy Reynolds (Denver City Council): Thank you, Council President Donahue. What I would like to do- because I know many of the people watching it...

Conan: Kathy Reynolds is the sponsor of this bill, which is modeled on the California legislation. Emotions have been running so high that plain-clothes police are scattered throughout the crowd, and the cops running the metal detectors downstairs are confiscating Swiss Army knives.

Unidentified Man #1: I believe you are conspiring to overthrow the Constitution of the United States.

Unidentified Man #2: The right to bear arms does not automatically mean that a citizen of this country can go to their closet and drive out of their house in a tank.

Unidentified Man #3: I don't have an assault gun, I don't want one, but I do want and demand the liberty to possess one. The militia that the Second Amendment refers to is not the National Guard, it's not any of the arm services, it is we, the people.

Unidentified Man #4: The people who want this ban on assault rifles won't stop at AK-47's and Uzi carbines. These people won't stop until all guns are outlawed.

Conan: This is the second time this year that this issue has come up in Denver. Last spring, an assault weapons ban sponsored by State Senator Pat Pasco [sp] failed in a bruising fight in the state legislature. Ever since, and again this evening, Senator Pasco has tried to make the gun lobby's tactics an issue.

Pat Pasco (State Senator, Denver): I would like to point out a pattern of intimidation against lawmakers, which you are familiar with right here. I would like to suggest that you need to pass this bill tonight, not only to limit the number of assault weapons in Denver, but more importantly perhaps, to repudiate the tactics of lies, half-truths and intimidation of the NRA. Thank you.

Conan: The pattern, Senator Pasco says, goes beyond aggressive lobbying and even harrassment, to death threats. She has had special police protection this year and she blames both the NRA, the National Rifle Association, and the Colorado Firearms Coalition, which she describes as a local offshoot. Jay Peck, the chairman of the coalition, is married to the treasurer of the NRA's officially sanctioned state association, but he maintains that his organization is entirely separate. Peck says that he organized the coalition following the Stockton incident, when the NRA warned that it would need more help from local groups to handle so many brush